Law Office of Jack Silver

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Via Certified Mail –
Return Receipt Requested

November 18, 2016

Nick Fidler - Public Works Director
City of Bakersfield
Public Works Administration Offices
City Hall South Annex Building
1501 Truxton Avenue, 2nd Floor
Bakersfield, CA 93301

Alan Tandy - City Manager
Members of the City Council
City of Bakersfield
1600 Truxton Avenue
Bakersfield, CA 93301

Craig M. Pope, P.E. - Director
Department of Public Works
Head of Agency
Kern County Public Services Building
2700 M Street
Bakersfield, CA 93301

Kathleen Krause - Clerk of the Board
Members of the Board of Supervisors
Kern County
1115 Truxton Avenue, 5th Floor
Bakersfield, CA 93301

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Messrs. Fidler, Tandy, Pope, Ms. Krause, Heads of Agency, City Council Members and Members of the Board of Supervisors:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of Wastewater Treatment Plant No. 2, Wastewater Treatment Plant No. 3 ("Facilities") and their associated stormwater and sewer collection systems.

Notice is provided to the City of Bakersfield ("City") and Kern County ("County") separately and collectively ("Co-permittees") in their capacity as the owners and operators

of the storm water and sewer collection system servicing the City and the Bakersfield Urbanized Area[1]; and the City as the sole owner and operator of the Facilities which discharge to effluent storage ponds and adjacent navigable waters to which those ponds are hydrologically connected.

Following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Co-permittees for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Central Valley Region ("RWQCB-5F") Water Quality Control Plan ("Basin Plan") as the result of alleged unlawful discharges of sewage from the Co-permittees' sewer and stormwater pipelines and Facilities to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the Co-permittees violate the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the Co-permittees' operations in the region at issue in this Notice is the RWQCB-5F.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent

[1] The Bakers Urbanized Area is identified and referred to in Regional Water Quality Control Board, Central Valley Region Waste Discharge Requirements Order No. R5-2013-0153 as the urbanized areas of Kern County enclosed within the City and surrounding the City, and the urbanized areas within the City.

standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the Co-permittees with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specified standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of sewage from the Co-permittees' storm water and sewage collection systems and the Facilities to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a), which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

Mandates set forth in Waste Discharge Requirements ("WDR") Order No. R5-2013-0153, NPDES No. CA0083399, *"Waste Discharge Requirements, City of Bakersfield and County of Kern Storm Water Discharges From Municipal Separate Storm Sewer System Kern County*" issued by RWQCB-5F ("MS4"), regulate the discharge of storm water and non-storm water runoff from storm drains within the Co-permittees' jurisdiction. River Watch contends the Co-permittees are in violation of the following discharge provisions:

"A. Discharge Prohibitions - Storm Water Discharges

1. Discharges from the MS4 in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance as defined in Section 13050 of the Water Code are prohibited.

2. Discharges from the MS4 which cause or contribute to exceedance of water quality standards (designated beneficial uses in the Basin Plan and the water quality objectives developed to protect those uses) for surface water or groundwater, are prohibited.

3. Discharges from the MS4 containing pollutants, which have not been reduced to the MEP [maximum extent possible], are prohibited."

WDR Order No. R5-2009-0122, "*Waste Discharge Requirements for City of Bakersfield Wastewater Treatment Plant No. 2 Kern County*" regulates the discharge of approximately 25 million gallons per day of wastewater from Wastewater Treatment Plant No. 2 to about 5,476 acres of farmland located primarily to the south of the facility. Plant No. 2 maintains nine (9) effluent storage ponds adjacent to the central branch of the Kern Island Canal, a tributary of the Kern River. The ponds have a capacity of 6,190 acre-feet, providing approximately 81 days of storage when discharging 25 million gallons per day, and approximately 135 days of storage at the average flow rate of 14.9 million gallons per day.

WDR Order No. R5-2009-0087, "*Waste Discharge Requirements for City of Bakersfield Wastewater Treatment Plant No. 3 Kern County*" regulates the discharge of approximately 15 million gallons per day of un-disinfected secondary-treated effluent from Wastewater Treatment Plant No. 3 to the approximately 1,400-acre I-5 Reclamation Site located eight miles south. Plant No. 3 maintains four (4) adjacent effluent storage ponds to store wastewater during wet weather when the I-5 Reclamation Site cannot be used. The ponds have a capacity of 1,140 acre-feet, providing approximately 5 months of storage when discharging 15.9 million gallons per day. The City has admitted the ponds leak and discharge to groundwater. Groundwater in and around the ponds is hydrologically connected to adjacent surface waters.

The City has no NPDES permit authorizing it to discharge any waste to a water of the United States.

SWRCB Order No. 2006-0003-DWQ, "*Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*" ("Statewide WDR") requires public entities owning or operating sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California to comply with the requirements of the Statewide WDR in order to reduce the number of sanitary sewer overflows ("SSOs").

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from November 18, 2011, to November 18, 2016, the Co-permittees have violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Collection System Surface Discharges Caused by SSOs

SSOs, in which untreated sewage is discharged above-ground from the sewer collection system prior to reaching either of the Facilities or one of the Co-permittees' detention or retention basins, are alleged to have occurred both on the dates identified in

California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on the dates when no reports were filed by either or both of the Co-permittees, all in violation of the CWA.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as 292, with 555,814 "Total Vol of SSOs (gal)," of that amount, the Co-permittees claim that 14,466 gallons "Total Vol Reached Surface Water," amounting to **2%** of the total. However, a review of the records indicates a much greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Critically, of the 555,814 total gallons of sewage spilled, only 77,879 gallons, or just **14%**, were recovered. The remainder were discharged into the environment posing both a nuisance pursuant to Calif. Water Code § 13050(m), and imminent and substantial endangerment to health and the environment.

The below listed violations are reported by the Co-permittees to RWQCB-5F and evidenced in the CIWQS SSO Reporting Program Database Records:

33 - SSOs reported as reaching a water of the United States. As listed in CIWQS, the event IDs of those violations are: 771923, 772187, 784789, 784803, 785859, 787718, 787719, 787723, 788388, 788402, 788418, 788425, 788742, 789661, 790655, 792088, 793022, 793023, 793391, 793394, 793396, 793408, 793410, 793413, 793857, 794024, 795699, 795818, 796792, 797110, 797363, 798074, 798319.

All of these discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States, without complying with any other sections of the Act. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

Significant Releases Reported. The Co-permittees' aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines cause a buildup of pressure resulting in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as the Kern River, East Side Canal, Carrier Canal, Stine Canal, or Kern Island Canal – all waters of the United States.

As recorded in CIWQS Public SSO Reports, the Co-permittees' sewer collection systems has experienced at least 33 SSOs between November 18, 2011 and November 18, 2016, with a combined volume of at least 12,465 gallons – 2,765 gallons of which were reported as having reached surface waters. A few examples are identified below:

- August 5, 2012 (Event ID # 784789) – an overflow estimated at 1,000 gallons occurred at Pecos River Drive and Haswell Street as a result of clogged pumps. According to the report filed, all 1,000 gallons discharged to Drainage Basin #220.

- February 2, 2013 (Event ID # 792088) – an overflow estimated at 100 gallons occurred at 6501 Colony Street as a result of grease deposition. According to the report filed, all 100 gallons discharged to retention sump #133.

The Co-permittees' SSO Reports, which would reveal critical details about each of these SSOs, lack responses to specific questions that would identify the causes and the potential repairs ensuring these violations would not recur. For example, the Co-permittees' SSO Reports frequently state "null" in response to Question 12 ("Number of appearance points") and Question 44 ("Explanation of Volume estimation used"). Finally, River Watch contends the Co-permittees are underestimating impacts to surface water. Of the 33 reported violations identified on CIWQS, none were sampled for pollutants.

Inadequate Reporting of Discharges. River Watch's expert believes many of the SSOs reported by the Co-permittees as having been contained without reaching a surface water did in fact discharge to surface waters; and those reported as partially reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time the Co-permittees receive notification of an SSO, the time of response, and the time at which the SSO ended, too often appear as unlikely estimations. For example, in nineteen (19) of the thirty-four (34) SSOs listed in CIWQS, the spill start time is reported as the same time the agency was notified; and of those 19 events, 14 list the spill start time, time of agency notification, and the arrival time of the operator as identical.

As an example, the June 11, 2013 spill (Event ID #795818) reports the spill start time, agency notification time, and operator arrival time all as 01:35 a.m., and the spill end time as 02:00 a.m. – only 25 minutes later. The August 26, 2013 spill (Event ID #798319), reports both the spill start time and operator arrival time as 9:30 a.m., but the agency notification time is listed as 9:00 a.m. – half an hour before the spill started. It is highly unlikely these times and intervals are accurate. As a result, River Watch contends the Co-permittees are grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the Co-permittees fail to adequately mitigate the impacts of SSOs. The Co-permittees are permitted under the Statewide WDR governing the operation of sanitary sewer systems, and Order No. 5R-2013-0153, NPDES CA 0083399 regulating the discharge of storm water runoff from storm drains within the Co-permittees' jurisdiction. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of an SSO. The EPA's "*Report to*

Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances.

Numerous critical habitat areas exist within areas of the Co-permittees' SSOs. The Kern River watershed is the native range of the California golden trout, Little Kern golden trout and Kern River rainbow trout. Wildlife along the Kern River includes raccoon, opossum, squirrel, muskrat, skunk, kit fox, armadillo, coyote, beaver and several species of snakes and bats and birds. At Lake Ming, just north of the City, Bald Eagles winter with Great Egrets. The Bird Count, centered at Hart Park on the Kern River, averages 140 species each year. Tule Elk State Reserve, located at the northern edge of the mouth of the Kern River, is home to the once threatened Tule Elk as well as several bird species including the yellow-headed, tricolored, red-winged and Brewer's blackbirds, peregrine and prairie falcons and Swainson's hawks. Other endangered and threatened wildlife and plant species in the watershed include Bakersfield cactus, Bakersfield saltbush, and Buena Vista Lake Shrew.

There is no record of the Co-permittees performing any analysis of the impact of SSOs on critical habitat of protected species under the Federal Endangered Species Act ("ESA"), nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the Co-permittees to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the Co-permittees are severely underestimating SSOs which reach surface waters, River Watch contends they are sampling very few reported SSOs.

B. Pond and Collection System Subsurface Discharges Caused by Underground Exfiltration

The City acknowledges the storage ponds located on the Facilities leak and exfiltrate to adjacent groundwater. This groundwater is hydrologically connected to adjacent surface waters. Hydrological modeling indicates that pollutants are migrating from the ponds to nearby waters of the United States. The City has no NPDES permit allowing for these types of discharges.

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the Co-permittees' sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to, the Kern River, East Side Canal, Carrier Canal, Stine Canal, or Kern Island. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the sewer collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.[2] Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, and video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the Co-permittees' discharges is a violation of the NPDES permit and in turn, the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the Co-permittees' sewer collection system to determine the location and extent of exfiltration.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the diverse and sensitive ecosystem surrounding the sewer collection system and Facilities.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entities responsible for the alleged violations identified in this Notice are the City of Bakersfield, Kern County, and those of their employees responsible for compliance with the CWA and any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violation.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the Co-permittees which relate to their sewage collection system and the Facilities as further described in this Notice.

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[2] *See* the Report of Human Marker Study issued in July of 2008 and conducted by Dr Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

A. Background

The City of Bakersfield lies near the "horseshoe" end of the San Joaquin Valley, some 110 miles north of Los Angeles and about 135 miles inland from Pismo Beach. City limits extend to the Sequoia National Forest, at the foot of the Greenhorn Mountain Range and at the entrance to Kern Canyon. The City's primary receiving waters are the Kern River and Tulare Lake Basin canals. Its population has increased from 161,670 in 1989 to approximately 375,000, making it the 9th largest city in California and the 51st largest city in the United States. The total inner urban area, which includes East Bakersfield and Rosedale, has a population of approximately 464,000.

Kern County ranks in the top five (5) most productive agricultural counties (by value) in the United States. The County has an arid climate characterized by hot dry summers and mild winters. The rainy season generally extends from November through March. Average annual precipitation and evaporation in the areas referenced in this Notice are about 6" and 58", respectively. Industries include natural gas and other energy extraction, aerospace, mining, petroleum refining, manufacturing, distribution, food processing and corporate/regional headquarters. Kern County is the most oil productive county in the United States with around 10% of the nation's domestic production.

B. Sewer Collection System

The City is responsible for the operation and maintenance of a majority of residential and commercial storm water conveyance systems (catch basins, storm water pipes, manholes, junction boxes and inlet structures) and disposal systems, typically an infiltration basin, also known as a sump, located within city limits. The City owns a total of 342 sumps, usually seen as large, empty basins surrounded by fences, averaging 1.5 acres in size, and ranging up to 10 or 12 feet deep. The sewer collection system consists of 1,069 miles of sewer main piping, 6" or greater in diameter, and 55 pump and lift stations.

Due to the interrelationship between the discharges from the Co-permittees' municipal storm sewers, urbanized areas of the County in the vicinity of the City are designated as part of the medium municipal storm sewer. The Co-permittees originally obtained coverage under WDR Order 94-164, NPDES Permit CA0083399, adopted on June 24, 1994. Coverage was subsequently obtained under WDR Order 5-01-130, NPDES Permit CA 0083399, adopted on June 14, 2001. The current Permit (Order No. R5-2013-0153) was adopted on December 6, 2013.

The permitted MS4 areas are located only within the Bakersfield Urbanized Area. The Co-permittees' March 30, 2007 NPDES Permit renewal application states that the drainage area to the MS4 within the City and the County totals approximately 16,499 acres

with each Co-permittee controlling approximately 50% of the sewer collection system. The MS4, including the City, consists of approximately 23 miles of major storm drain channels and 40 miles of major closed conduit conveyances. The City's Agricultural Division maintains over 340 storm water drainage recharge basins. Urban storm water runoff from the Bakersfield Urbanized Area is directed to one of approximately 322 terminal retention basins, one of 52 direct outfalls, or one of 10 indirect outfalls (discharging after flowing through detention basins) discharging to the Kern River, East Side Canal, Carrier Canal, Stine Canal, or Kern Island Canal. Approximately 90% of the average annual storm water runoff is retained in storm water terminal retention basins or sumps, where the water is allowed to soak into the soil and deep underground. The water is later pumped out of the groundwater wells, disinfected and put into the distribution system. When it is used, the groundwater is treated at the wellhead. Groundwater accounts for up to 80% of local supplies for the City, with water from rivers and reservoirs providing up about 20%.

According to NPDES Permit No. CA 0083399, approximately 40% of the drainage area within the permitted Bakersfield Urbanized Area (and approximately 90% of new development) is located in un-sewered areas, and discharges to open detention or retention basins. New developments in the Bakersfield Urbanized Area are required to contain and infiltrate runoff in retention basins. The Co-permittees have jurisdiction over and/or maintenance responsibilities for a storm drainage system in the Bakersfield Urbanized Area. Approximately 80% of the Bakersfield Urbanized Area discharges storm water to terminal basins. Urban storm water runoff from the remaining 20% of the Bakersfield Urbanized Area drains to the Kern River, including drainage through the East Side Canal, Carrier Canal, Stine Canal, and Kern Island Canal.

When private development occurs, new sump basins are typically constructed to capture and retain runoff from the newly developed area. When construction is complete, a private entity, such as a homeowners' association, assumes operation and maintenance responsibilities for the sump, typically after one year. The City does not conduct formal assessments of privately operated sumps once the construction process is completed. This practice began in the 1980s to save costs of extending the municipal storm sewer system in the southern portion of the permitted area, where new development slopes south and away from the Kern River and canals. Therefore, instead of a conventional storm drainage system of pipes and outfalls, portions of the Bakersfield Urbanized Area convey stormwater into open basins using a combination of pipes, ditches, open channels, curbs and gutters. According to the Permit, these basins are not considered waters of the United States; they are regulated by the Permit according to California's jurisdiction over land discharges to groundwater. However, peak storm flow captured in the basins is occasionally discharged to waters of the United States.

According to a study conducted by the EPA in 2012, some basins overflow to other basins during major rain events. The EPA also noted that older basins were constructed using different design criteria than newer basins and may not infiltrate or percolate at the same rate as newer basins, and that sediment buildup (sometimes due to "inadequate maintenance" can prevent basins from infiltrating as designed. As a result, basins may be drained or pumped into canals during peak storm to prevent flooding. The Permit authorizes the Co-permittees to discharge stormwater from the Phase I MS4s into the Kern River and various canals of the Tulare Lake Basin.

The East Side Canal, Stine Canal, and Kern Island Canal are owned and operated by the Kern Delta Water District. Carrier Canal is jointly owned by the City and the Kern Delta Water District, and operated by the City. Kern River and the canals are considered waters of California and waters of the United States or tributaries to waters of the United States.

C. The Facilities

Wastewater from homes, schools and businesses are piped through the sewer collection system to the Facilities. About 30 million gallons of wastewater are treated each day.

Wastewater Treatment Plant No. 2 is located west of Mr. Vernon Avenue about 2.5 miles south of State Route 58, and about 2 miles north of Panama Lane, and serves the incorporated and unincorporated areas of central, east, northeast, and southeast Bakersfield which are generally east of Highway 99.

The daily capacity of Plant No. 2 is 25 million gallons with an average daily flow of 13.7 million gallons. The facility processes 220 tons of bio-solids per month. The existing treatment system consist of a headworks, 3 primary clarifies, 3 trickling filters, 3 secondary clarifiers, 9 storage ponds with a capacity of about 6,190 acre feet, 4 sludge digesters with methane recovery and a cogeneration system, and 18 sludge drying beds. In wet periods when the disposal areas cannot accept the wastewater, effluent is stored in the storage ponds.

Wastewater Plant No. 3 is located southwest of the City and occupies the northeastern quarter of a 640-acre, City-owned parcel that comprises all of Section 33, Township 30S, Range 27E, Mount Diablo Base & Meridian. Plant No. 3 is bounded by McCutcheon Road to the north, Gosford Road to the west, vacant land to the south, and Ashe Road to the east. Plant No. 3 serves commercial, industrial and residential developments in the western portion of the incorporated metropolitan area of the City, west of Highway 99 in Kern County.

Plant No. 3 is an activated sludge facility with a design capacity of 32 million gallons per day and a current average flow of 17.3 million gallons per day. Plant No. 3 processes 260 tons of bio-solids per month. The treatment system consists of 2 bar screens, a wet well, 2 aerated grit chambers, 4 primary clarifiers, 4 trickling filters, 4 secondary clarifiers, 4 effluent storage ponds (total capacity of about 1,140 acre-feet), 6 anaerobic digesters, an equalization lagoon, and about 20 acres of unlined sludge drying beds. Chemical addition of ferric chloride and polymers is conducted to enhance the primary settling process and increase plant efficiency. Plant No. 3 is authorized to discharge up to 16 million gallons per day of un-disinfected secondary-treated effluent, the majority being pumped to an approximately 1,400-acre site about 8 miles west, designated as the I-5 Reclamation Site.

The I-5 Reclamation Site is owned by the City of Los Angeles and is bounded by Interstate Highway 5 on the east, Enos Lane on the west and Taft Highway on the north. In wet periods when the I-5 Reclamation Site cannot accept the wastewater, effluent is stored in the 4 effluent storage ponds. The average volume of wastewater discharged daily from Plant No. 3 since January 2007 is about 15.9 million gallons, or 49 acre-feet.

5. *The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is November 18, 2011 through November 18, 2016. River Watch may from time to time update this Notice to include violations of the CWA by the Co-permittees which occur during and after this range of dates. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472.

River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained counsel to represent it regarding the issues set forth in this Notice. All communications with respect to and/or in response to this Notice should be

directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with Co-permittees' staff to tailor remedial measures to the specific operation of the sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective, could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including: age, composition and PACP rating of the sewer line in question, the nature of the defect, soil types, and groundwater patterns.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration.

Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect.

II. REMEDIAL MEASURES

River Watch believes the following remedial measures may be necessary to bring the Co-permittees into compliance with the Act and the Basin Plan:

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the Co-permittees' sewer collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the Co-permittees will:

i. Repair or replace all sewer lines found to be Significantly Defective;

ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the Co-permittees' discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the Co-permittees determine the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the Co-permittees shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the Co-permittees shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.

5. Provision in the Co-permittees' Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the Co-permittees' Backup and SSO Response Plan to include in their reports submitted to the CIWQS State Reporting System the following items:

i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered.

ii. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Pursuant to the Co-permittees' legal obligation under the Statewide WDR, Section D.7.v., the Co-permittees shall have a qualified biologist develop and implement an adequate sampling program to determine the nature and impact of all SSOs.

3. Creation of a website by Co-permittees to track information regarding SSOs or, in the alternative, creation of a link from the Co-permittees' website to CIWQS SSO Public Reports. Notification shall be given by the Co-permittees to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines and the Facilities' various ponds to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

iv. Upon replacement or repair of any part of the sewer lateral;

v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or

vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

D. Pond Monitoring

1. Within one (1) year, the completion of a study to determine if any pollutants are migrating from any of the storage ponds on the Facilities to ground waters and/or waters of the United States.

2. Within six (6) months after the date of the completion of the above study, if it is determined that pollutants are migrating to waters of the United States, the Co-permittees will either cease these discharges or apply for a NPDES permit that will allow for such discharges.

3. Within six (6) months after the date of the completion of the above study, if it is determined that pollutants are creating an imminent and substantial endangerment to ground waters, the Co-permittees will either cease these discharges or mitigate them so they no longer pose any imminent and substantial threat.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks and/or the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Co-permittees' alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day "notice period" to promote resolution of disputes. River Watch strongly encourages the Co-permittees to contact River Watch or its counsel within 20 days after receipt of this Notice to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

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